

# The weary fight against endemic corruption in 2022



Embassy of Italy  
Pristina



Ministry of Foreign Affairs  
and International Cooperation

**BYRN**  
BALKAN  
INVESTIGATIVE  
REPORTING  
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## Methodology

The Balkan Investigative Reporting Network in Kosovo (BIRN Kosovo) is the first civil society organisation in Kosovo to have put particular emphasis in monitoring the justice system by continuously observing and writing comprehensive reports on the overall functioning, management, efficiency and efficacy of the rule of law in the country.

For 17 years in a row, BIRN monitors have continuously tracked Kosovo's justice system and dealt with its most current and crucial issues. This particular report focuses entirely on corruption cases and how the system is fighting this phenomena from the very initial investigation cases, up to the sentencing policies used when adjudicating these cases.

This report has been drafted based on direct monitoring of over 50 corruption cases across all Kosovo courts. The cases monitored, analysed and reported within this report include the following:

1. “Stenta 1”
2. “Veteranët”
3. “FAN”
4. “Mashtrimi me viza”
5. Kryetari i Gjakovës dhe të tjerët
6. “Toka”
7. Kryetari i Gjilanit dhe zyrtarët komunalë
8. Drejtori i Sekretariatit të KPK-së dhe të tjerët
9. Zyrtarët e Komisionit të Pavarur për Media
10. “Hidrocentralet”

In addition to the direct monitoring of court hearings held across Kosovo courts during 2022, for purposes of this report, BIRN has also analysed the entire performance of each case since its beginning. This includes judgements issued by various court instances and concrete findings generated per each case, thus providing an overview of the quality of judgements issued by Kosovo courts in corruption cases.

In order to highlight whether corruption cases are handled with the right priority and conduct, BIRN looked into the performance of each case based on the deadline set by the Criminal Procedure Code.

The selection of cases for this report was initially based on the type of the criminal offence, whether it was in the scope of the corruption criminal offences chapter or not, the profile of the officials involved in the indictment, with a particular focus placed on senior officials, the volume of the damage alleged as well as cases highlighted for Visa liberalisation.

The report provides concrete recommendations on the issues identified. These recommendations are all aimed at improving the efficiency, accountability and transparency of the justice system.

## Introduction

The courts of Kosovo have continuously been criticised for the way they handle corruption cases, how they elongate cases until the statute of limitations, the quality of verdicts that are usually acquittals and the fact that corrupt acts often receive inadequate and disproportionate sentences.

The majority of local and international reports, including the BIRN reports, draw attention to flaws in the investigation of corruption cases. Beginning at the early stage of the investigation, these flaws include the unsatisfactory quality of the indictments, the lack of sufficient evidence, especially in the investigation financial and the identification of assets acquired through criminal offences, protracted judicial processes and subpar judgments that are overturned by higher-ranking judges.

There are several reasons why it is crucial to combat organised crime and corruption as well as to hold offenders accountable. Because the vast majority of these crimes are committed by public servants, lawmakers, ministers, judges and prosecutors, deputies and assembly members, physicians and inspectors, among others, the intent behind these crimes is considerably broader and deeper than it is in other criminal offences.

Along with being a component of the crime, the official status given to these persons gives them respect, resources, support and influence in the neighbourhoods where they reside. As a result, the harm they cause has a greater impact than that of other offenders.

Therefore, these individuals' engagement in corrupt, illegal activities has broader implications than is typically the case with other criminal acts. On the other side, these individuals present a more challenging issue when it comes to being sought after, investigated, tried and penalised. This is also a result of the particulars of corruption-related criminal charges.

Deri më tani në vendin tonë kemi parë që shumë profile të larta, duke filluar nga ministra, ish-kryeministra, gjyqtarë, prokurorë, kryetarë të gjykatave, drejtorë, deputetë, fillimisht janë përfolur, pastaj janë ndjekur, janë hetuar, janë akuzuar dhe në fund pas gjykimeve maratonike, kanë përfituar pafajësinë teksa dëmet e shkaktuara ndaj pasurisë publike vetëm janë konstatuar.

Up until now in our country, we have seen many high-profile individuals such as ministers, former prime ministers, judges, prosecutors, presidents of courts, director, and deputies being accused and convicted of crimes. These people often enjoy an initial wave of popularity only for it later to be revealed that they are criminals who cause significant damage to public property.



Moreover, some of the biggest corruption cases in the country end up obsolete in the drawers of the courts without being completed.

There is a blame game going on between the justice system, prosecution body and courts. Prosecutors accuse the courts of not providing enough evidence to convict those charged with corruption. The court accuses prosecutors of not providing sufficient evidence to do their job well. This blame continues indefinitely until someone becomes impeached or resigns from their post.

In addition to this, in the cases in where the courts issue guilty verdicts, the sentences imposed are mild and do not coincide with the gravity of the criminal offences, despite the fact that the Supreme Court of Kosovo has issued a special guideline of the penal policy for the cases of corruption<sup>1</sup>, which so far has not been properly implemented.<sup>2</sup>

This report will discuss the effectiveness of how investigations, trials and decisions are made in cases where a conviction is obtained. It will also assess whether punitive policy interventions are effective in punishing offenders.

The report also contains individual analysis of the monitored cases, reflecting on the nature of the case, the profile of the accused, the description of the crime they are accused of committing, as well as the chronology of the case. The main findings of the report are presented below.

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<sup>1</sup> Guidelines of the Supreme Court on Sentencing Policies in Corruption cases, available at: [https://supreme.gjyqesori-rks.org/wp-content/uploads/legalOpinions/98248\\_UDHEZUESI%20PER%20VEPRAT%20E%20KORRUPSIONIT-10%20qershor%202021.pdf](https://supreme.gjyqesori-rks.org/wp-content/uploads/legalOpinions/98248_UDHEZUESI%20PER%20VEPRAT%20E%20KORRUPSIONIT-10%20qershor%202021.pdf)

<sup>2</sup> BIRN and Internews Kosova report on monitoring the justice system during 2021, available at: <https://kallxo.com/wp-content/uploads/2022/06/Raporti-i-monitorimit-Imuniteti-i-korrupsionit-Final-Review-mas-printimit-23-06-2022.pdf>



## Key findings

### Quality of investigations

The investigation phase of a criminal case is the phase that determines the success or failure of the case in court. The quality and accuracy of the evidence that the prosecuting body collects during the investigation phase practically determines the verdict of that case.

The cases monitored and analysed for the purpose of this report show significant shortcomings of the prosecution body to ensure a quality and supported investigation, starting from compliance with the provisions of the Code of Criminal Procedure for the implementation of covert measures, the quality of financial investigations and expertise of this nature, up to the general quality of accusatory acts that fail to be proven in court.

The case “Stenta” illustrates that even after more than six years of court investigations, the prosecutor of the Special Prosecutors Office of Kosovo, Florije Shamolli-Salihi, changes the disposition of the accusation in the final saying by removing the claims that the “accused have not acted in compliance with the Law of the Public Procurement” standing by financial expertise and, for more, the claimed damage is changed from €4.5 million to €11,000.

This case illustrates that this investigation, which has been marked as a success by the indictment body, has not been sufficiently defined for the prosecution body until the final review.

The other case that highlights the shortage in the financial investigation is “Veteranët”, in which the prosecution body claims that the damage made to the budget of Kosovo is €68 million. This accusation is in its primary steps, and was submitted to court in September 2018. Now it has been returned from the Basic Court of Pristina where the resubmitted accusation in the court increases the amount of the claimable damage from €68 million to €88 million.

Even more disturbing than the lack of accuracy and detail are the cases where neglect of the provisions of the Code of Criminal Procedure by the prosecutors results in acquittals at the end of court proceedings. It is also concerning when a negative case conclusion is determined in the initial stages due to segregation of essential case evidence.

The case of the “Former Mayor of Gjilan Municipality” highlights a very serious problem, which is that essential documents have been missing from the case file or have deficiencies. As a result, the court issues an acquittal verdict. In the case of declaring the acquittal verdict, the chairwoman of the judging court, Nushe Kukaj-Mekaj, reveals how in the documents of the case the request of the prosecution for the issuance of covert surveillance measures is missing — convincingly the main evidence of the whole case.

It is also clear in the case of the “Director of the KPK Secretariat” that this detrimental behaviour puts the case at risk of failing. The Basic Court and the Court of Appeal ruled that the publication of the major piece of evidence in this case — a CD purportedly comprising recordings of the meeting with the cooperating witness — had not complied with the Code of Criminal Procedure. As a result, the CD has been singled out as evidence..

Moreover, it turns out that all of the indictments (Stenta 1, "Hydropower plants," "Visa fraud," Former Mayor of the Municipality of Gjakova," Former Mayor of the Municipality of Gjilan," and others) in this report have not been proven in a court that have resulted in a final verdict or at the current stage of the procedure.

### **Case delays and prescription**

A requirement for a fair trial that takes place within a reasonable amount of time derives from the European Convention on Human Rights, is incorporated into the Constitution of the Republic of Kosovo and is made explicit in the Code of Criminal Procedure.

The cases monitored and analysed for the purpose of this report demonstrate extreme deficiencies in this area, including the significant prolongation of cases, sometimes to the point of their obsolescence, which results in multiple damages. These damages include the denial of the accused's right to a fair trial and a violation of their legal security, the loss of public confidence in the justice system, failure to address the financial costs to the nation's budget and the entrapment of other offenders.

The "Land" case is the most illustrative example of the Kosovo legal system's impasse because from October 2016, when the indictment was filed, until the end of 2022, we have not received a commendable decision. The forecast made by the Italian EULEX prosecutor Danilo Cekarrelli at the moment the case was transferred from EULEX to the local ones turns out to be true, despite the fact that dozens of hearings had been held by EULEX and local judges and prosecutors.<sup>3</sup>

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<sup>3</sup> Please see “TOKA” case, [under the Individual Case Analysis](#) section.

"Stenta" is another lengthy case. Although we have verdicts from several levels of courts, the indictment, in this case, was filed in the first half of 2016, and there is still no concluding chapter.

"Veterans" is another case that exhibits delays. The indictment, in this case, was brought in September 2018, and we now have the foundation's acquittal and the appeal's decision to order a new trial. Despite the significance of the case and the alleged enormous harm to the public budget, no hearing has yet been held since the case was returned for retrial at the beginning of 2022.

"Former mayor of the Municipality of Gjilan" and other cases have also been linked to major delays. The indictment, in this case, was issued in September 2016, but the accused was only freed from custody by the Peja Court in April of 2022 since the matter is still pending before the Court of Appeal.

"Hydropower plants" is the most concerning example of a statute of limitations delay. Since the crime is alleged to have been committed in May 2013, the indictment in this case was filed in April 2020 against 19 people, of whom the Basic Court and the Court of Appeals found that the relative statute of limitations had passed for 13 of them. For the other six accused, the absolute statute of limitations will pass on May 8, 2023. The Special Prosecution of the Republic of Kosovo - SPRK prosecutor has indicated that he will appeal the case to the Court of Appeal, but the matter has already been decided in the first instance with an acquittal.

The "FAN" case is similar to the prior instance but has already been proven to have repercussions. Since the case has passed the absolute statute of limitations and the legal system has not been able to render a final merit judgement for an indictment brought in 2015, all of the defendants have already been freed.

## Quality of court decisions

One of the key elements in cases taking longer than the statute of limitations to be resolved is the calibre of judicial decisions and judgments. According to the opinions of the highest-ranking courts, the "walking" of cases from one level to another is brought on by judgments and rulings that fall short of the minimal requirements.

A case that demonstrates how the Court of Appeal believes that the Basic Court of Pristina "was mistaken in showing the most crucial fact" is the "Veterans" case.<sup>4</sup>

Comparable to the case of the former mayor of the Municipality of Gjakova, the Court of Appeal reversed the Founder's conviction in the "STENTA" case because there were serious procedural irregularities and improper factual verifications. While solely in relation to the decision to affirm the indictment, that is, from the first stage, the case of the former mayor of the Municipality of Peja has been returned twice by the Court of Appeal.

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<sup>4</sup> Please see "Veterans" case, [under the Individual Case Analysis section](#).

## Individual Analysis of Cases

### “Stenta 1”

The former Minister of Health, Ferid Agani, and the former Secretary of this Ministry, Gani Shabani, were accused of having acted contrary to the Law on Public Procurement and the administrative instructions of the Ministry of Health by allowing payments for the treatment of patients outside public health institutions. This occurred during the period of 2011 to 2015.

#### Chronology of the case

##### **June 14, 2016**

The indictment is filed.<sup>5</sup>

##### **April 24, 2019**

The Basic Court sentences the accused.

Ish-ministri i Shëndetësisë, Ferid Agani, ishte dënuar me 2 vjet e gjashtë muaj burg ndërsa ish-sekretari i përgjithshëm i kësaj Ministrie, Gani Shabani, me 2 vjet burg, pasi ishin gjetur fajtorë për keqpërdorim të detyrës zyrtare në rastin e njohur si “Stentat”.<sup>6</sup>

**December 24, 2019** – The Court of Appeal returns the case for retrial.

After the submission of the appeal by the defenders, the second-degree court accepted their appeals as well-based and found that the first-degree court had violated the procedural provisions. The court proved that the factual situation was handled incorrectly and incompletely, thus returning the case to retrial and reinstatement.<sup>7</sup>

**July 29, 2022** – Florie Shamolli, Prosecutor at the Special Prosecutor's Office of Kosovo, in her final speech, changed the disposition of the indictment in the part where it says that "they did not subject you to the Procurement Law" and also changed the value of the damage caused.

<sup>5</sup> KALLXO.com article: <https://kallxo.com/shkurt/aktakuze-ndaj-ferid-aganit-dhe-63-personave-te-tjere/>

<sup>6</sup> KALLXO.com article: <https://kallxo.com/shkurt/gjykata-demon-ferid-aganin-dhe-gani-shabanin/>

<sup>7</sup> KALLXO.com article: <https://kallxo.com/ligji/kthehet-ne-rigjykim-rasti-i-ish-ministrit-ferid-aganit-per-stentat/>

Shamolli withdrew from this part on the grounds that there is procurement expertise that finds that subsidies are not subject to the Procurement Law. In addition, Shamolli said that the value of the damage, according to her, is not €4.5 million as previously stated in the indictment, but €11,450, which the prosecutor said was based on financial expertise.

### **August 1, 2022 – The Basic Court of Pristina acquits the accused<sup>8</sup>**

Six years and one months, or 2,237 days to be exact, have passed since the indictment was filed until the acquittal was announced. However, there is no information as to whether the verdict has been finalised at the time of writing this report.

## **“Veteranët”**

In this case, 12 people are accused – including members of the governmental committee for verifying the status of KLA veterans. As such, Agim Çeku, Nuredin Lushtaku, Sadik Halitjaga, Shkumbin Demaliaj, Qelë Gashi, Shukri Buja, Ahmet Daku, Rrustem Berisha, Faik Fazliu, Smajl Elezaj, Fadil Shurdhaj and Xhavit Jashari are accused of inflating the lists of combat veterans for 19,500 people.

### **Chronology of the case:**

#### **September 14, 2018**

The indictment is filed.

#### **October 9, 2018**

The court returns the indictment for completion.

#### **December 7, 2018**

The indictment is completed.

#### **January 19, 2021**

The court issues an acquittal.<sup>9</sup>

All the accused have been found not guilty.

<sup>8</sup> KALLXO.com article: <https://kallxo.com/lajm/pas-gjashte-vitesh-lirohen-nga-akuza-per-rastin-stenta-ish-ministri-dhe-ish-sekretari-i-ministrise-se-shendetesise/>

<sup>9</sup> KALLXO.com article: <https://kallxo.com/lajm/arsyetimi-i-gjykates-per-lirimin-e-te-akuzuarve-per-fryrjen-e-listave-te-veteraneve/>

During the announcement of the verdict president of the judging panel Nushe Mekaj said, "In evaluating these laws, SPOK, in the provision of the indictment, has not determined what the duties of the Commission were and what duties it did not fulfil. The court has found that it initially worked on the basis of a decision of the Government of 2012, which repealed decision number 4/121 of the Government of the RKS dated 22.04.2010, and then, as a sub-legal act, there was regulation 23/2011 based on which the work methodology and the competences of the KVSH were determined."

**April 26, 2022** – The Court of Appeal returns the case for retrial.<sup>10</sup>

Among other things, in the reasoning of the appeal, it is stated that, in relation to this case, the Basic Court has also mistaken the most essential fact:

"The Court of Appeal has found that the first degree has wrongly established the most essential fact related to the approval of the lists by the Committee, in this criminal case when it relies on the legal norms according to which the accused in the capacity of members of the Committee acted and that there were two laws in force when they acted"

From the return of the case to a retrial by the Court of Appeal, no hearing has been scheduled, as the case was initially "walked" into competence on May 24, 2022. The Department for Serious Crimes at the Basic Court declared incompetence in relation to this case, hence returning the case to the Special Department of the Basic Court of Pristina, which then returned the case to the Department for Serious Crimes again. The Court of Appeal also intervened, and on July 27, 2022 it found that this conflict of competence should be resolved by the president of the Basic Court of Pristina.

On September 6, 2022, the president of the Basic Court of Pristina issued a decision saying that this case will be handled by the Department of Serious Crimes.

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<sup>10</sup> KALLXO.com article: <https://kallxo.com/ligji/rasti-veteranet-kthehet-ne-rigjykim/>



## Officials of the Independent Media Commission

According to the indictment filed on September 15, 2021, Luan Latifi, in the capacity of the head of the Independent Media Commission (IMC), and Arben Bilalli, in the capacity of the director of Administration and Finance at the IMC, had requested and received bribes in the amount of €8,000 from Elhami Haziri, owner of the company "Telkos", in June 2021.

### Chronology of the case

#### **September 15, 2021**

The indictment is filed.

#### **November 2, 2021**

The Basic Court confirms the indictment.

#### **December 23, 2021**

The Court of Appeal confirms the indictment.

#### **July 25, 2022**

Arben Bilalli pleads guilty.

The procedure against the other accused is separated.

#### **July 28, 2022**

The verdict against the accused, Arben Bilalli, is announced.

Arben Bilalli, former director of administration and finance at the Independent Media Commission (IMC), has been sentenced to 140 days in prison and a €12,000 fine for the criminal offence of bribery.

## “Hidrocentralet”

According to the indictment of the Special Prosecutor's Office of the Republic of Kosovo, Besim Beqaj, as head of the Government Privatization Committee (GPC), as well as Mimoza Kusari-Lila, Nenad Rashiq, Dardan Gashi, and Lorik Fejzullahu, as members of the GPC, have been accused of enabling any material benefit and causing damage to the other person, hence exceeding their competences. According to the indictment, on May 8, 2013, they unanimously voted that the hydropower plants that produce electricity, such as Lumbardhi hydropower plant, Burim hydropower plant, Radavci hydropower plant, and "Dikance" hydropower plant, should be transferred to the Kosovar Company for Energy Distribution and Supply (KCEDS). Then they hoped for these hydropower plants to then be privatised by the company "Limak-Calik". Arben Gjukaj, Fllanza Hoxha and 13 other people were also accused in this case

### Chronology of the case

#### April 10, 2020

The indictment is filed against 19 people.

#### March 12, 2021

The Basic Court of Pristina confirms the indictment against six people while rejecting it for 13 others due to the statute of limitations of prosecution against them.<sup>11</sup>

So, for this case, at the time when the indictment was filed, it had already reached the relative statute of limitations against 13 people, while the final statute of limitations for the other six accused will be done on May 8, 2023.

#### November 8, 2022

The Basic Court announces an acquittal against the accused.<sup>12</sup>

<sup>11</sup> KALLXO.com article: <https://kallxo.com/ligji/konfirmohet-aktakuza-ndaj-6-te-akuzuarve-ne-rastin-hidrocentralet/>

<sup>12</sup> KALLXO.com article: <https://kallxo.com/lajm/lirohen-nga-aktakuza-4-ish-ministrat-e-qeverise-thaci-2-akuzoheshin-per-faljen-e-4-hidrocentraleve/>

## “FAN”

### Case description

According to the indictment of the Special Prosecutor's Office of Kosovo, the accused include Naser Osmani, vice-chairman of the board of directors of the Privatisation Agency of Kosovo (PAK), Bahri Shabani, director of the board of PAK, Shkelzen Lluka, manager of PAK, Naim Avdiu, deputy managing director of PAK, and Melita Ymeraga, Ardian Kelmendi, Agron Kamberaj as head of the Monitoring Unit in PAK. In cooperation with other officials these people engaged as international members of PAK and have exceeded their official powers with the aim of obtaining illegal benefits for themselves or for the other person, in the amount of over €5.4 million.

#### **December 23, 2015**

Ngritja e aktakuzës

#### **April 4, 2016**

The indictment is initially reviewed.

#### **February 8, 2019**

The judgement is announced.

Naser Osmani and the other accused: Melita Ymeraga, Adrian Kelmendi, Bahri Shabani, Shkelzen Lluka, and Naim Avdiu were found not guilty of abuse of official position.

#### **March 4, 2020**

The Court of Appeal returns the case to a retrial

The retrial began on July 8, 2021, but that hearing has failed, as have the hearings scheduled for September 28, October 28, November 25, December 16, December 23, and January 11, 2022.

A total of 27 court hearings have been scheduled thus far.

### Chronology of the case

The time of committing the offence according to the SPOK is between 2008 and January 20, 2012.

The Court's decision read, "After evaluating and analysing the case files in this criminal case against the aforementioned accused, the Court finds that the absolute statute of limitations for criminal prosecution has been reached, because, according to the provisions of article 106 par. 1 point 1.4 of the Criminal Code of the Republic of Kosovo, the criminal offence which is punishable by more than three years of imprisonment is prescribed when five years have passed from the date of the commission of the criminal offence (relative prescription/statutory limitation), while according to the provisions of Article 107 par. 8 of the Criminal Code of the Republic of Kosovo, criminal prosecution is prohibited in any case when twice the time of the absolute limitation period has passed, while in the present case more than 10 years have passed from the time of the commission of the criminal offence, which is charged to the accused, so that: The absolute statute of limitations for these offences has been reached on January 19, 2022."

### "Toka"

The Special Prosecutor's Office of the Republic of Kosovo has filed two indictments regarding this case, one with 17 people and the other with 22 people. The latter, which was filed on October 25, 2016, also includes the former Democratic Party of Kosovo deputy, Azem Syla, who, according to the indictment, was also the leader of this group.

These cases were then known as "Toka 1" and "Toka 2", but only the "Toka 1" case will be covered in this analytical report.

The indictment charges the defendants with the following criminal offences: organised crime, money laundering, receiving bribes, serious fraud, fraud in office, issuing illegal court decisions, abuse of official position, legalisation of counterfeit content and tax evasion.

## Chronology of the case

### October 25, 2016

The indictment is filed<sup>13</sup>

### February 20, 2018

The case is transferred from the EULEX Prosecutor's Office to local judges.<sup>14</sup>

The transfer of the case from the EULEX mission to the local judges caused the "explosion" of Danilo Cekarrelli, the Italian EULEX prosecutor.

"The transfer of this case to the locals means that it is the end of the case and we all know the reason why," Ceccarelli said.

During 2018, after the transfer of the case to the local judges, only one court hearing was held for this case, while nine others failed to be held.

Until now, the following EULEX judges have been involved in the "Toka" case: Arkadiusz Sedek and Petko Petkov. As the case passed to the local judges, it was initially assigned to judge Beqir Kalludra, but after his promotion to the Court of Appeal, the case was assigned to judge Shpresa Hasaj Hyseni, who failed to hold any court hearing related to this case.

Currently, this case has been assigned to the judge of the Special Department of the Basic Court in Prishtina, Arben Hoti, who, based on the provisions of the Code of Criminal Procedure, had to start working on the case from the beginning after more than three months had passed from the last session.

Also, similarly to the judges, the body of the prosecution has been changed several times and the case has been represented by five prosecutors, first by Danilo Ceccarelli, and then by Abdurrahim Islami, Sylë Hoxha, Naim Abazi and Habibe Salihi.

From February 19, 2020 until June 2022, more than two years, no hearing was held for this case.

Although more than six years have passed since the indictment was filed, the case is still at the witness hearing stage, while about 30 sessions of the special investigative opportunity have been held with regard to this case.

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<sup>13</sup> KALLXO.com article: <https://kallxo.com/shkurt/aktakuze-kunder-azem-syles-dhe-te-tjereve/>

<sup>14</sup> KALLXO.com article: <https://kallxo.com/shkurt/prokurori-turp-eulex-transferimi-rastit-syla-te-vendoret/>

## “Visa Hoax”

Special Prosecution an indictment against Ilir Krasniqi, former member of Parliament, Milaim Zeka and another person, 28, 2018 filed with an allegation that the defendants have committed several offences against the law.

Zeka and Krasniqi have been accused with the allegation that they created an employment agency business from June 2016 until March 2017 with the purpose of legal financial benefits.

As the accusation of PSRK, the defendants have proven fake fact with the intention to hire citizens of Kosovo to work in Germany during tv programme “Pa Rrota” enticing citizens to apply at their offices in the “Pejton” neighbourhood, in Pristina.

Krasniqi and Zeka were accused of hoaxing 900 employment Visa applicants and they took from them from €500 to €3,050, dividing them proportionally among themselves.

### Chronology of the case

#### **August 28, 2018**

The indictment is filed.

#### **April 26, 2022**

The acquittal is announced.

According to this judgement, the three people accused in this case are acquitted of all points of the indictment because it has not been proven that they committed the criminal offences. This is due to a lack of evidence from witnesses and victims and the fact that no evidence was administered during the trial.<sup>15</sup>

<sup>15</sup> KALLXO.com article, accessible at the link - <https://kallxo.com/ligji/milaim-zeka-shpallet-i-pafajshem-ne-rastin-e-mashtimit-me-viza-video/>

## Former mayor of the Municipality of Gjakova

On April 10, 2016, the Special Prosecutor's Office of Kosovo filed an indictment against Pal Lekaj and others.

Lekaj, who served as the municipality's mayor, and the other accused individuals were charged with abusing their positions during the distribution of subsidies.

Pal Lekaj and the officials were charged with violating the Law on the Management of Public Finances by distributing subsidies through the company "UNION-VL" from 2008 to 2014 while operating in their official capacities.

### Chronology of the case

#### **April 10, 2018**

Pal Lekaj, three municipal officials and one businessman are charged by the Kosovo Special Prosecutor's Office.

#### **31 May 2018**

The accused enter a not-guilty plea.

#### **February 19, 2021**

The judgement is announced by the Basic Court in Gjakove. Lekaj received a term of probation totaling one year and six months.

Former municipality officials, Gani Rama and Ismet Isufi, were punished for misuse of office and received probation. Ismet Isufi received a sentence of one year and six months of conditional imprisonment while Gani Rama received a sentence of one year. The accused Veli Hajdaraga received a fine of €8,000 as well as a suspended sentence of one year for tax evasion and fraud with subsidies.

A supplementary punishment has been issued, prohibiting the defendants Gani Rama, Ismet Isufi and Pal Lekaj from performing duties in public administration or in public services for a period of two years starting from the date this verdict becomes final.

Within a year of the verdict's finality, the four defendants must pay the Municipality of Gjakova €69,786 in damages as compensation for the penalty.

Additionally, Veli Hajdaraga has been ordered by the court to pay TAK a total of €21,283 in back taxes owed and €3,435 in personal contributions, all within a year of the judgement's finality date.



**August 23 2021** – The Court of Appeal approves the appeal of the defence and remands the case.<sup>16</sup>

**January 21 2022** – The Basic Court in Gjakovë acquits the accused in the absence of evidence<sup>17</sup>

**August 2022** – The Court of Appeal confirms the acquittal against Pal Lekaj.

### Former Mayor of the Municipality of Gjilan and the others

On September 16, 2016, the Special Prosecutor's Office of the Republic of Kosovo (PSRK) issued an indictment against Qemajl Mustafa and 35 other people, including businessmen and elected officials from the Municipality of Gjilan.

The indictment claims that while operating in their official capacities, the officials mishandled their responsibilities, abused their authority or fell short of their obligations. Whereas, in the case of participating in procurement activities close to this municipality, the other defendants, acting as owners or representatives of these economic operators, have engaged in economic activity with the intent to unlawfully obtain material benefit for either themselves or for the other economic operator.

The former mayor of the Municipality coordinated with this group's activities regarding the planning of procurement activities and the selection of the successful bidder, always agreeing in advance with the currently charged defendants. More specifically, the mayor always agreed with the owners or representatives of the economic operators mentioned in the indictment.

18 tenders are included in this indictment from the Special Prosecutor's Office of the Republic of Kosovo, which also includes Qemajl Mustafa, the former mayor of the Municipality of Gjilan, as well as 26 other municipal officials and nine business owners.

<sup>16</sup> KALLXO.com article, accessible at the link - <https://kallxo.com/ligji/gjykata/kthehet-ne-rigjykim-rasti-ndaj-pal-lekajit-dhe-te-tjereve/>

<sup>17</sup> KALLXO.com article, accessible at the link - <https://kallxo.com/ligji/pal-lekaj-dhe-te-tjeret-lirohen-nga-akuza-per-korrupsion-video/>

## Chronology of the case

### **September 16 2016**

The indictment is filed<sup>18</sup>

### **November 21 2017**

The initial hearing takes place.

### **April 18 2018**

Basic Court of Peja decides to drop the indictment.

Due to the relevant statute of limitations for the crime, the court dismissed the criminal proceedings against the 10 accused who were charged with the criminal offence of misuse in the economy and the 19 accused of misuse of the official duty in complicity. It was determined by the court that there are no elements of organised crime in the case of Mustafa and the others accused.

Out of the 29 accused as a criminal group who had committed the criminal offence of corruption related to the awarding of tenders in the Municipality of Gjilan only 12 accused would face the charges of the special prosecution for corruption and the one with the new qualification of criminal offence, according to the Court's decision.

**September 14, 2018** – The Court of Appeal returns the case of the indictment to reinstatement, thus approving the appeal of the PSRK.

**November 30, 2018** – The Court of Peja decides again to partially confirm the indictment.

**February 19, 2019** – The Court of Appeal approves the appeal of the PSRK and decides that Qemajl Mustafa and all the accused will be tried for all charges.

**13 prill 2022** – The Basic Court of Peja acquits all the accused.

According to the judge of the case, Nushe Mekaj, the evidence obtained, respectively the interceptions issued on the basis of the ordinance of the District Court, were issued in violation of the law and that the request of the prosecution for the issuance of the ordinance for the secret measures of interception and the Special Prosecution failed to prove the well-founded suspicion that the defendants committed the criminal offence.

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<sup>18</sup> KALLXO.com article, accessible at the link <https://kallxo.com/shkurt/aktakuze-ndaj-qemajl-mustafes-dhe-38-te-tjereve/>

In addition to the absence of the request of the prosecution to issue secret measures, the court has reasoned that the Special Department against Corruption had asked the District Prosecutor's Office to issue secret measures for Qemajl Mustafa and two suspects; however, according to the reasoning of the Basic Court in Peja, The District Court had issued an order for these three suspects, not emphasising the well-founded suspicion of any criminal offence.

"This Court found that a request of the PSRK does not exist in the case documents, which even the PSRK could not provide," - it was stated in the Court's written reasoning - "in order to understand how the Prosecutor's Office was asked to issue the order, that is, what was the criminal offence that the persons in question were suspected of."

The Court has also noted that the Prosecutor's Office violated Article 263 of the Code of Criminal Procedure by launching the secret measures without first conducting a formal inquiry.

"The prosecutor has the obligation to notify the persons who have been subjected to the measure within six months, when there is no longer any reasonable suspicion or no indictment has been filed within a year, after the end of the deadline for issuing the ordinance, in order to enable them to appeal for the legality of the evidence, otherwise the evidence must be destroyed by the state prosecutor," the decision of the Court of Peja reads.

According to the court, another violation was the fact that the Special Prosecutor's Office took a decision to start investigations in 2015 for 39 people, even though there was no order for covert measures for them.

"Consisting in violation of Article 257, par.4 of the Code of Criminal Procedure, which provision clearly determines that in order for the evidence to be legal for other persons who have been intercepted, a special ordinance must be issued against them, and that in the case in question, the SPRK had enough to support the incriminating actions for the other 36 defendants in the SMS provided by the order issued for Qemajl Mustafa, Hatixë Daku and Nazmi Jashari," the court's decision reads.

### Director of the KPC Secretariat and others

According to the indictment filed on August 13, 2021 from the Basic Prosecutor's Office in Pristina, Lavdim Krasniqi, in the capacity of the director of the Secretariat of the Prosecutorial Council, and Ardian Krasniqi, in the capacity of his personal driver, are accused of requesting and accepting money and gifts from Bashkim Mulolli from January 2018 until the end of 2019.

According to the indictment, Ardian Krasniqi received money several times, reaching the figure of €40,000. He also received a car worth €25,000 as a gift for Lavidim Krasniqi's assistant, Marigona Berisha.

They will use their influence to persuade the officials in the College of the Supreme Court of the Republic of Kosovo to reduce the sentence for the convicted Bashkim Mulolli in accordance with the request for the protection of legality and to delay the execution of the same. The Prosecutor's Office accuses them of having committed the crime of exercise of influence, in succession and in co-commitment as a result of these actions.

Marigona Berisha and Ardian Krasniqi are also accused by the prosecutor's office of separately committing the crime of document falsification. The indictment claims that on December 16, 2019, the accused Berisha allegedly forged a document claiming to have paid Bashkim Mulolli €8,400 and €600 euros in misdemeanour fines to the notary Sefadin Blakaj's office. It was later determined that Mulolli did not sign this document, disproving Berisha's claim that she did.

Ardian Krasniqi is suspected of faking a COVID-19 test on August 19, 2020. He used Bashkim Mulolli's data since Mulolli tested positive, allowing Krasniqi to delay the execution of his sentence. The indictment charges Lavdim and Ardian Krasniqi with complicity in committing the criminal offence, which was the misuse of official position or authority.

In the indictment it is stated that the both Krasniqis, due to the obligations they had towards Mulolli, had misused their official duties, so that they had prevented the arrest of Albi Mulolli, who was suspected of committing aggravated attempted murder, by enabled the latter to escape from Kosovo to Albania in the official car of Lavdim Krasniqi.

According to the indictment, Lavdim Krasniqi is also charged with misuse of official position or authority in collaboration with Flora Doda, because they both have violated public procurement procedures and rules.

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<sup>19</sup> Artikull i KALLXO.com i qasshëm në linkun - <https://kallxo.com/lajm/ngritet-aktakuze-ndaj-lavdim-krasniqit-marigona-berishes-e-dy-personave-te-tjere/>

## Chronology of the case

### August 13, 2021

The indictment is filed.

### October 6, 2021

The accused plead not guilty at the initial hearing.<sup>20</sup>

### November 2021

The Basic Court rejects two counts of the indictment for abuse of office and declares a CD, which was among the main evidence of the prosecution, inadmissible as evidence.

This is because according to this decision, the order of the judge of the preliminary procedure was issued contrary to the procedure provided by the Code of Criminal Procedure of the Republic of Kosovo<sup>21</sup>

### February 2022

The Court of Appeal approves the appeal of the PSRK regarding the two counts of the indictment for misuse of official duties, but confirms the decision of the Basic Court regarding the inadmissibility as evidence of the CD and its transcript.

This evidence (the CD) was considered by the prosecuting body to be a crucial piece of evidence in the case, as it claimed to contain a video recording of a meeting between Lavdim Krasniqi and a cooperating witness of the Prosecution. However, the CD was declared inadmissible due to the reason that it was released in violation to the provisions of the Code of Criminal Procedure. According to both the Basic and Appeal Courts, the judge of the preliminary procedure has issued the order for surveillance in violation of the Code of Criminal Procedure. This happened despite the fact that it is known who is the lead of the investigation, the order was issued to persons NN.

The case is currently at the witness hearing stage.

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<sup>20</sup> KALLXO.com article, accessible at the link - <https://kallxo.com/ligji/ish-sekretari-i-keshillit-prokurorial-deklarohet-lidhur-me-akuzat-per-afera-korrutive/>

<sup>21</sup> KALLXO.com article, accessible at the link - <https://kallxo.com/lajm/ndaj-ish-sekretarit-te-kpk-se-i-akuzuar-per-disa-vepra-penale-hidhen-poshte-dy-pika-te-akuzes-per-shperdorim-detyre/>

## Recommendations

- The Kosovo Prosecutorial Council, KPC in cooperation with the Academy of Justice must add new training modules, especially those related to financial investigation and public procurement.
- The Kosovo Prosecutorial Council must analyse corruption cases which failed due to clear procedural errors made by prosecutors.
- Prosecutors who have caused inadmissibility of fundamental proof through their actions or inactions in violation of the principles of the Criminal Procedures Code, must undergo disciplinary procedures, performance evaluation and even look for potential elements of potential criminal responsibility.
- Corruption cases must be handled with priority by the Kosovo Judicial Council in order to avoid going into statutory limitation, especially corruption cases and cases highlighted for Visa liberalisation.
- Kosovo Courts must schedule concurrent hearings in order to more efficiently treat corruption cases and those highlighted for Visa liberalisation.
- Judges whose cases undergo statutory limitation on corruption cases, must undergo performance evaluation and assess their disciplinary procedures and potential criminal responsibility as well;
- Prosecutors must use all necessary mechanisms to increase the quality of financial investigations during the examination phase.

**Disclaimer:**

The project Media Strengthening the Rule of Law in Kosovo is financed by the Ministry of Foreign Affairs and International Cooperation of Italy through the Italian Embassy in Pristina.

The contents of this publication are the sole responsibility of BIRN Kosova and do not necessarily reflect the views of the Ministry of Foreign Affairs and International Cooperation of Italy.



